

State Corporation Commission Bureau of Insurance Regulation of Continuing Care Retirement Communities in Virginia

**Presented to the Continuing Care Retirement
Communities Sub-Work Group**

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SCC Authority and CCRC Regulation

- ❖ The State Corporation Commission Bureau of Insurance has regulated CCRCs in Virginia since July 1, 1985.
- ❖ The Statute that provides for regulatory oversight of CCRCs by the BOI is Chapter 49 of Title 38.2 of the Code of Virginia.
- ❖ Oversight is primarily that of ensuring proper disclosures by the CCRC as well as monitoring the CCRCs financial condition.
- ❖ There are currently 55 CCRCs registered in Virginia.

Regulation of CCRCs in Other States

- ❖ The National Association of Insurance Commissioners (NAIC) has not established a model law for adoption by the states regarding CCRCs.
- ❖ There is no uniform regulation for CCRCs among the states.
- ❖ The United States Government Accountability Office (GAO) released a study in June 2010 describing the risks affecting CCRCs and residents and how state laws address these risks.
- ❖ The study focused on the regulation of eight states which did not include Virginia. According to the report, state laws differ significantly in the level of regulation of CCRCs.
- ❖ *The 2012 Assisted Living and Continuing Care Retirement Community State Regulatory Handbook* published by American Seniors Housing Association provides a summary of CCRC regulations in the 38 states and the District of Columbia that regulate CCRCs.

Requirements in 38 States and the District of Columbia that Regulate CCRCs

Requirement	Total Number of States & DC	Virginia
Disclosure Statement	33	
Financial Report	35	
Financial Feasibility Study	19	
Actuarial Study	19	
Escrow of Fees	33	
Reserves	23	
Surety Bonds	8	
Liens	7	
Resident's Right to Organize in an Association	22	
Resident's Right to Meet with Management	21	
Source: <i>Assisted Living and Continuing Care Retirement Community State Regulatory Handbook, 2012.</i>		

CCRC Filing Requirements in Virginia

A. Initial Registration

- ❖ Prior to operating in Virginia every continuing care provider files a registration statement, disclosure statement, continuing care contracts, and audited financial statements.
- ❖ Staff has 90 days to complete the review of these documents for compliance with the Code requirements.
- ❖ Facilities under construction are required to file additional information regarding construction costs and financing.

B. Annual Disclosure Statement Filing

- ❖ Annually within 4 months of the provider's fiscal year end the provider is required to file an updated disclosure statement, continuing care contracts, and audited financial statements.
- ❖ The annual filing also is required to include a narrative describing material differences between the prior year's pro forma income statement and the actual results of operations.

C. Amended Filings

- ❖ Amended filings are required any time when a provider determines amendment is necessary due to a material change.

Composition of a Disclosure Statement

A. Narrative

- ❖ Information on the Continuing Care Provider
 - ❖ Name, address, business type of provider
 - ❖ Ownership and control over provider
 - ❖ Names and information on officers, directors, owners
 - ❖ Business experience of provider, officers, directors, owners, and management
 - ❖ Criminal, civil, or administrative convictions or investigations
- ❖ Ownership of property and buildings
- ❖ Location and description of property
- ❖ Affiliation with religious, charitable, or nonprofit organizations and information on tax exemptions
- ❖ Description of services provided under continuing care contracts
- ❖ Fees Required of Residents
 - ❖ Entrance fees and monthly fees
 - ❖ Uses of fees
 - ❖ Escrowing and refunding provisions
 - ❖ Description of adjustments to periodic fees
 - ❖ Tables detailing rate changes
- ❖ Reserve funding
- ❖ Admission of residents
- ❖ Access to facility by nonresidents
- ❖ Information required for facilities under construction

Composition of a Disclosure Statement

B. Resident's Contract

- ❖ 38.2-4905 requires the following items to be included in each continuing care contract:
 - ❖ Continuing care provided to each resident.
 - ❖ Details of values of property transferred by or for residents.
 - ❖ Specific details of services to be provided to residents.
 - ❖ Description of health and financial condition that may require resident to relinquish space.
 - ❖ Description of health and financial condition required to continue as resident.
 - ❖ Current fees if resident marries and terms concerning spouse's entry into facility.
 - ❖ Description of good cause provision for cancelation of contract.
 - ❖ Details of refund provisions.
 - ❖ Terms for contract cancellation by death.
 - ❖ Terms for at least 30 days advance notice before any changes in fees or services.
 - ❖ Residents rights to rescind the contract.
 - ❖ Residents rights prior to occupying the facility.

C. Audited Financial Statements

- ❖ Certified financial statements of the provider including a balance sheet and income statement for the two most recent fiscal years.

D. Current Pro forma Income Statement

Financial Monitoring

A. SCC Authority

- ❖ SCC may act to protect residents and prospective residents when the Commission determines that:
 - ❖ A provider is unable to meet the pro forma income or cash flow projections filed and such failure may endanger its ability to perform its obligations.
 - ❖ A provider is bankrupt, insolvent, under reorganization pursuant to federal bankruptcy laws, or in imminent danger of becoming bankrupt or insolvent.

B. Orders and Penalties

- ❖ SCC may order providers to cease and desist from violations of Chapter 49.
- ❖ SCC may issue a permanent or temporary injunction or a restraining order to enforce compliance with Chapter 49.

C. Examples

- ❖ SCC entered into a consent order with a provider to cease collection of entrance fees from new residents due to financial instability of the provider. Provider's operations were reorganized through bankruptcy including issuance of new bonds and the Consent Order was lifted. Provider resumed normal operations.
- ❖ SCC requested a provider cease collection of entrance fees from new residents as part of bankruptcy of the provider. Provider's operations were reorganized through bankruptcy with the provider being purchased by a new owner. Provider resumed normal operations.

Resident's Rights

- ❖ Residents have right of self-organization
 - ❖ No retaliatory conduct permitted against resident for participating or filing a complaint.
- ❖ Copies of submissions
 - ❖ Provider required to provide the resident's association a copy of all submissions to the Commission.
 - ❖ Provider is required to provide all prospective residents a copy of the disclosure statement at least 3 days prior to the execution of a continuing care contract.
 - ❖ Provider is required to make available by written notice a copy of the annual or amended statement.
- ❖ Quarterly meetings
 - ❖ BOD or designated representative required to hold meetings with residents.
 - ❖ Residents must receive 7 days notice of each meeting.
- ❖ Free discussion of issues relating to the facility
 - ❖ Income, expenditures, and financial matters
 - ❖ Proposed changes in policies, programs, facilities, and services
- ❖ Change in chief executive officer or management firm
 - ❖ Notification must be prompt

Questions?

